

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 3/12/03 Item: 3.a.

File Number
CP03-002/ABC03-002

Application Type
Conditional Use Permit / ABC Exception Permit

Council District
5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
592-19-006

PROJECT DESCRIPTION

Completed by: Caleb Gretton

Location: East side of north Capitol Avenue approximately 1,200 feet northerly of McKee Road

Gross Acreage: 8.39

Net Acreage: 8.39

Net Density: n/a

Existing Zoning: CG Commercial

Existing Use: Commercial Retail Center (Target)

Proposed Zoning: No change

Proposed Use: Sale of alcohol for off-site consumption at an existing retail/grocery store

GENERAL PLAN

Completed by: CG

Land Use/Transportation Diagram Designation

Regional Commercial

Project Conformance:

☒ Yes ☐ No

☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: CG

North: Single-Family Detached Residential

A(PD) Planned Development Residential

East: Sheppard Middle School

R-1-8 Residential

South: Commercial Shopping Center

CG General Commercial

West: Single-Family Residential

A(PD) Planned Development Residential

ENVIRONMENTAL STATUS

Completed by: CG

☐ Environmental Impact Report
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: CG

Annexation Title: McKee No._51

Date: September 12, 1968

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Caleb Gretton

Department of Public Works

None received

Other Departments and Agencies

See attached memoranda from Police Department Vice Unit.

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Target Retail Stores, is requesting a Conditional Use Permit and Liquor License Exception Permit to allow the sale of wine and beer for off-site consumption in conjunction with an existing Target retail store.

The site is located in the CG General Commercial Zoning District, which allows alcohol sales for off-site consumption subject to approval of a Conditional Use Permit. A Liquor License Exception Permit is required for liquor license applications that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill No. 2897, which requires the ABC to deny an application “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.”

The retail store is located in a commercial shopping center on an 8.39-gross-acre site. The shopping center contains a variety of commercial uses. Single-family residential uses are located to the north and west across Capitol Avenue of the subject property. To the east of the subject site across Rough and Ready Road is Sheppard Middle School. To the south of the project site are commercial uses.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review

The primary project issues include the appropriateness of the business for alcohol sales, conformance with the Zoning Ordinance and conformance with the Liquor License Exception Permit requirements.

Appropriate business for alcohol sales.

Target is a large retail store similar in operation to that of a full-service grocery store. Target does not have a permit to operate as a late night business and is only allowed to operate from 6 a.m. to 12 p.m. Although no policy has been formally adopted, the City of San José through previous approvals of Liqueur License Exceptions has made a determination that this type of business is appropriate for the off-sale of alcohol. Big box retail stores, like full-service grocery stores, operate in a manner that does not facilitate a quick purchase of alcohol for immediate consumption, which is more closely related to alcohol related incidents. Compared to small convenience stores or liquor stores that offer individually packaged beverage containers that are ready for immediate consumption, the sales of alcohol at large retail stores such as Target is incidental to the entire operation of the store and constitutes only small percentage of their overall sales. Therefore, the Target retail store is considered an appropriate type of business for off-sale of alcohol.

Conformance with the Zoning Ordinance.

The project proposes the sale of pre-packaged alcohol for off-site consumption. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG Commercial General Zoning District. The Planning Commission may grant the Conditional Use Permit if it makes the following findings, where applicable:

1. If the use is closer than five hundred feet from any other off-sale use, the Planning Commission must find that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
2. If the use is closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred and fifty feet from any residentially-zoned property, the Planning Commission must find that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

One other off-sale establishment is located within the same shopping center. This establishment is a grocery store (Albertson's), which is permitted to sell beer, wine, and spirits for off-site consumption, and is approximately 650 feet to the south of the Target retail store. Because it is separated by more than 500 feet, the proposed off-sale of alcohol does not meet the definition threshold that would require the Commission to consider if approval of the subject permit would result in concentration.

center is Sheppard Middle School which is located approximately 175 feet from the Target retail store. The school is separated from the Target retail store by a parking lot, perimeter landscaping and fencing and Rough and Ready Road. There is no direct access from Rough and Ready Road to the shopping center, and one would be required to travel to McKee Road to Capitol Avenue in order to access the shopping center. Furthermore, the Target store appearance and orientation are compatible with these neighboring uses.

Liquor License Exception Permit. The applicant is also applying for a Liquor License Exception Permit as required for liquor license applicants that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, Caldera Bill. AB 2897 requires the ABC to deny an application for a liquor license “if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.” If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on “public convenience and necessity.”

Per City policy, the Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City’s Neighborhood Revitalization Strategy.
2. The City’s Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

The project site is not located within a Project Crackdown/Weed and Seed Area. Target is required to obtain a ABC Exception Permit because the reported crime statistics are over the 20% crime index as defined by ABC. However, the San José Police Department reports that the ratio of off-sale retail licenses to population in this census tract (5038.04) does not exceed the ratio of off-sale retail licenses to the general countywide population and thus the area is not considered to have an undue concentration of liquor licenses. Therefore, based on the “supermarket” nature of this business, the Police Department has issued a memorandum (attached) stating that it does not have any objections to the issuance of the Exception Permit and the Conditional Use Permit. The Police Department has indicated that the proposed use would not pose a detriment to the neighborhood and would not exacerbate current law enforcement problems in the area.

CONCLUSION

The proposed project meets all criteria outlined in the applicable policies. This supermarket-scale business is considered appropriate for the off-sale of alcohol. The proposed use is consistent with the

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Regional Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The site is located in the CG General Commercial Zoning District which allows retail sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer beer and wine for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San José Municipal Code Section 20.28.260, which regulates off-sale of alcohol.
5. The proposed project is located approximately 175 feet from an existing middle school site.
6. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing crime statistic of 20% or greater. The site is not located in an area with an existing over concentration of liquor sales.
7. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
8. The City's Police service investigation information (including but not limited to site specific neighborhood analysis of calls for service) indicates the proposal would not pose a detriment to the immediate neighborhood or exacerbate current law enforcement problems.
9. The site is located within 150 feet of property zoned and used for residential purposes.
10. Other off-sale establishments are located within the same shopping center.
11. A retail supermarket-type store within a neighborhood shopping center is an appropriate location for the off-sale of alcohol and the Police Department has indicated that the proposed use at this location would not pose a detriment to the immediate neighborhood or exacerbate current law enforcement problems.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use will not contribute to an excess concentration of establishments which sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use will not adversely affect proximate residential uses.
4. The proposed project complies with all applicable provisions of the Zoning Ordinance.
5. The proposed project satisfies the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
6. The proposal meets the requirements of the Liquor License Exception Permit process.
7. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and

subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
2. **Alcohol Sales.** The sale of alcohol shall conform to the requirements of the Liquor License requirements of the Department of Alcoholic Beverage Control.
3. **Retail Store Use.** The sale of alcohol shall be allowed in conjunction with the retail store use and shall not be allowed in conjunction with any other use.
4. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside the property.
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

C: Beth Aboulafia, Esq; Hinman & Carmichael, 260 California St. Ste. 1001, San Francisco CA 94111
Building Division (2)
Engineering Services